IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

WP(C).No. 27461 of 2004(T)

PETITIONERS:

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1. MOOZHIKKAL KUNHALANKUTTY,
   S/O.LATE KUNHAHAMMED, HAJIYARPALLI,
   MALAPPURAM DISTRICT.

2. PARI KUNHIMOHAMMED,
   S/O.ABOOBACKER, HAJIYARPALLI,
   MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR
SMT.SINDHU MURALEEDHARAN

RESPONDENTS:

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1. THE DISTRICT COLLECTOR,
   MALAPPURAM.

2. THE SPECIAL TAHASILDAR,
   LAND ACQUISITION (GENERAL),
   MALAPPURAM.

BY GOVERNMENT PLEADER SHRI L.G.SURESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDERS OF THE 2ND RESPONDENT DATED 6.7.2004 ON THE APPLICATIONS UNDER SECTION 28A OF THE LA ACT.

EXT.P2 -DO- -DO- DATED 2.7.2004 ON -DO- -DO-

//TRUE COPY//

P.A. TO JUDGE

K. PADMANABHAN NAIR ,J

W.P. (C) No.27461 of 2004 N

Dated, this the 24th day of August, 2007

JUDGMENT

Properties owned by the petitioners were acquired for a public purpose. Awards were passed and compensation given. Petitioners did not file any application under Section 18 of the Land Acquisition Act to refer the matter to the Sub Court for considering the claim for enhancement of compensation. Subsequently on account of enhancement of compensation in respect of other properties involved in L.A.R.No.32/1999 and 5/1997 acquired for a public purpose, petitioners filed application under Section 28A of the Land Acquisition Act claiming enhancement. The applications filed by the petitioners were rejected on the ground that D form cheque was received without protest though application under Section 28A of the Land Acquisition Act was filed within time. It was also held that the award passed in respect of the petitioner was under Award No.2/1999 whereas the copy of the judgment in L.A.R.Nos.32/1999 and 5/1997 produced by the petitioners was in respect of the properties covered by Award Nos.23/1999 and 4/1997. So the Land Acquisition Officer held that since award passed in respect of the properties of the petitioners was different from the awards dealt with in the judgment produced by the petitioners they are not entitled to get benefits provided under Section 28A of the Land Acquisition Act. Challenging those orders this Writ Petition is filed.

2. Learned counsel appearing for the petitioners submits that the properties acquired from the very same person were classified into different groups for the sake of convenience alone and not in accordance with character of the land. It is argued that lands of similar nature were included in different groups and separate awards were passed. It is argued that in all cases the petitioners received the compensation amount under protest. It is also submitted that in some cases protest was recorded on the counter foils of cheque but and in some other cases there was failure to record the same. That fact is denied by the respondents. It is also contended that applications filed by other persons under Section 28A of the Land Acquisition Act prior to the applications filed by the petitioners are still pending. It is argued that the petitioners are claiming benefits under Section 28A of the Act based on a judgment in L.A.R.Nos.32/1999 and 5/1997 and the land involved in those cases were not similar to that of the land acquired from the possession of petitioners and hence they are not entitled to get any enhancement based on that judgment. Ext.P1 order shows that the land involved in L.A.R.No.5/1997 was covered by an award passed in the year 1997 whereas the properties of the petitioners were included in an award passed in the year 1999.

3. After hearing both sides I am of the view that the petitioners can be given one more opportunity to show that in view of the judgment of the Sub Court in L.A.R.Nos.32/1999 and 5/1997 they are entitled to get the benefit under Section 28A of the Act. I make it clear that I am not expressing any opinion as to

whether the petitioners are entitled to get enhancement in view of the judgment in L.A.R.Nos.32/1999 and 5/1997. That is a matter to be decided by the Land Acquisition Officer in accordance with law. To enable the Land Acquisition Officer to reconsider the matter Exts.P1 and P2 orders are to be quashed.

In the result, Writ Petition is allowed. Exts.P1 and P2 orders passed by the second respondent Land Acquisition Officer rejecting the applications filed by the petitioners claiming benefit under Section 28A of the Land Acquisition Act are hereby quashed. Land Acquisition Officer is directed to re-consider the matter and pass appropriate orders with due notice to the petitioners as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

K. PADMANABHAN NAIR
JUDGE

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